

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
W.P., Appellant)	
)	
and)	Docket No. 23-0306
)	Issued: August 28, 2023
TENNESSEE VALLEY AUTHORITY,)	
BROWNS FERRY NUCLEAR POWER PLANT,)	
Decatur, AL, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 8, 2022 appellant filed a timely appeal from a November 22, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 22, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly suspended appellant's wage-loss compensation benefits, effective November 22, 2022, due to his failure to submit a Form CA-1032, as requested.

FACTUAL HISTORY

On February 3, 1986 appellant, then a 31-year-old machinist welder, filed a traumatic injury claim (Form CA-1) alleging that on November 25, 1985 he sustained a low back injury when he pulled on a stuck crane rigging cable while in the performance of duty. OWCP accepted the claim for lumbar strain. It paid appellant compensation for intermittent wage loss on the supplemental rolls, effective March 5, 1989. Appellant stopped work on October 25, 1991 and was separated from federal employment due to a reduction-in-force on November 25, 1991. He subsequently obtained employment in the private sector as a light truck driver. OWCP paid appellant wage-loss compensation on the periodic rolls, effective December 11, 1994, under an informal loss of wage-earning capacity determination, based on his actual earnings in the private sector.

Over the ensuing years, OWCP periodically requested that appellant submit financial disclosure statements (Form CA-1032) which solicited information regarding his employment, volunteer work, dependent(s) status, receipt of other federal benefits and/or payments, and third-party settlements.

On September 21, 2022 OWCP informed appellant that federal regulations required him to execute an affidavit relative to any earnings or employment during the previous 15 months and that a Form CA-1032 was enclosed for that purpose. It notified him that he must fully answer all questions on the enclosed form and return it within 30 days or his benefits would be suspended. OWCP mailed the notice to appellant's last known address of record. No response was received within the time allotted.

By decision dated November 22, 2022, OWCP suspended appellant's wage-loss compensation benefits effective that date, due to his failure to submit the Form CA-1032, as requested. It advised that, if he completed and returned the enclosed copy of the Form CA-1032, his compensation benefits would be restored retroactively to the date to the date they were suspended.

LEGAL PRECEDENT

Section 8106(b) of FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.³

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability

³ 5 U.S.C. § 8106(b).

to work which the employee has performed for the prior 15 months.⁴ If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.⁵

ANALYSIS

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective November 22, 2022, due to his failure to submit a Form CA-1032, as requested.

On September 21, 2022 OWCP provided appellant with a Form CA-1032 and notified him that federal regulations required him to complete the form and answer all questions concerning his employment or earnings. It notified him that, if he did not completely answer all questions and return the statement within 30 days, his benefits would be suspended. The Board has held that, absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.⁶ The presumption is commonly referred to as the "mailbox rule."⁷ The record reflects that OWCP's letter was properly sent to appellant's address of record and there is no indication that it was returned as undeliverable.

The record establishes that appellant did not submit a completed Form CA-1032 prior to the November 22, 2022 OWCP decision suspending his benefits. Thus, the Board finds that OWCP properly suspended his compensation benefits, effective November 22, 2022, pursuant to 20 C.F.R. § 10.528.⁸

CONCLUSION

The Board finds that OWCP has met its burden of proof to suspend appellant's wage-loss compensation benefits, effective November 22, 2022, due to his failure to submit a Form CA-1032, as requested.

⁴ 20 C.F.R. § 10.528.

⁵ *Id.*; *see also id.* at § 10.525.

⁶ *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Claudia J. Whitten*, 52 ECAB 483 (2001).

⁷ *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

⁸ *See B.F.*, Docket No. 22-0585 (issued October 20, 2022); *W.L.*, Docket No. 18-1051 (issued March 24, 2021); *M.W.*, Docket No. 15-0507 (issued June 18, 2015); *see also James A. Igo*, 49 ECAB 189 (1997).

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 28, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board